

THIRD DIVISION

[G.R. No. 141258. April 9, 2003]**TOMASA SARMIENTO, *petitioner*, vs. SPS. LUIS & ROSE SUN-CABRIDO and MARIA LOURDES SUN, *respondents*.****D E C I S I O N****CORONA, J.:**

This appeal by certiorari stems from the Decision^[1] of respondent Court of Appeals promulgated on November 26, 1999 in CA-G.R. SP No. 47431 declaring the private respondents not liable for damages.

Petitioner, Tomasa Sarmiento, states that sometime in April 1994, a friend, Dra. Virginia Lao, requested her to find somebody to reset a pair of diamond earrings into two gold rings.^[2] Accordingly, petitioner sent a certain Tita Payag with the pair of earrings to Dingdings Jewelry Shop, owned and managed by respondent spouses Luis and Rose Cabrido,^[3] which accepted the job order for ₱400.^[4]

Petitioner provided 12 grams of gold to be used in crafting the pair of ring settings.^[5] After 3 days, Tita Payag delivered to the jewelry shop one of Dra. Laos diamond earrings which was earlier appraised as worth .33 carat and almost perfect in cut and clarity.^[6] Respondent Ma. Lourdes (Marilou) Sun went on to dismount the diamond from its original setting. Unsuccessful, she asked their goldsmith, Zenon Santos, to do it. Santos removed the diamond by twisting the setting with a pair of pliers, breaking the gem in the process.^[7]

Petitioner required the respondents to replace the diamond with the same size and quality. When they refused, the petitioner was forced to buy a replacement in the amount of ₱30,000.^[8]

Respondent Rose Cabrido, manager of Dingdings Jewelry Shop, denied having entered into any transaction with Tita Payag whom she met only after the latter came to the jewelry shop to seek compensation from Santos for the broken piece of jewelry.^[9] However, it was possible that Payag may have availed of their services as she could not have known every customer who came to their shop. Rose disclosed that she usually arrived at 11:00 a.m. When she was not around, her mother and sister tended the shop.^[10]

Marilou admitted knowing Payag who came to Dingdings Jewelry Shop to avail of their services regarding a certain piece of jewelry. After a short conversation, Payag went inside the shop to see Santos. When the precious stone was broken by Santos, Payag demanded ₱15,000 from him. As the latter had no money, she turned to Marilou for reimbursement apparently thinking that Marilou was the owner of the shop.^[11]

For his part, Santos recalled that Payag requested him to dismount what appeared to him was a sapphire. While clipping the setting with the use of a small pair of pliers, the stone accidentally broke. Santos denied being an employee of Dingdings Jewelry Shop.^[12]

Attempts to settle the controversy before the *barangay lupon* proved futile.^[13] Consequently, petitioner filed a complaint for damages on June 28, 1994 with the Municipal Trial Court in Cities (MTCC) of Tagbilaran City docketed as Civil Case No. 2339 which rendered a decision^[14] in favor of the petitioner, the dispositive portion of which reads:

WHEREFORE, Decision is hereby rendered in favor of plaintiff Tomasa Sarmiento and against defendants Spouses Luis and Rose Sun-Cabrido, ordering defendants to pay jointly and severally the amount of Thirty Thousand Pesos (₱30,000.00) as actual or compensatory damages; Three Thousand Pesos (₱3,000.00) as moral damages; Five Thousand Pesos (₱5,000.00) as attorneys fees; Two Thousand Pesos (₱2,000.00) as litigation expenses, with legal interest of 6% per annum from the date of this decision and 12% per annum from the date when this decision becomes final until the amounts shall have been fully paid and to pay the costs.

This case as against defendant Maria Lourdes Sun as well as defendants counterclaim are dismissed for lack of merit.

SO ORDERED.

On appeal, the Regional Trial Court (RTC) of Tagbilaran City, Branch 3, reversed the decision of the MTCC, thus absolving the respondents of any responsibility arising from breach of contract.^[15] Finding no reversible error, the Court of Appeals (CA) affirmed the judgment of the RTC in its Decision promulgated on November 26, 1999.^[16]

Unable to accept the decision, the petitioner filed the instant petition for review with the following assigned errors:

I

THE COURT OF APPEALS ERRED IN MAINTAINING AND SO HOLDING THAT ZENON SANTOS IS NOT AN EMPLOYEE OF DEFENDANT (herein respondent) ROSE SUN-CABRIDO, AND IS THEREFORE ANSWERABLE FOR HIS OWN ACTS OR OMISSIONS

II

THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE REGIONAL TRIAL COURTS PRONOUNCEMENTS THAT THERE EXISTS NO AGREEMENT BETWEEN THE PETITIONER AND RESPONDENTS THAT THE LATTER WOULD ANSWER FOR ANY LIABILITY SHOULD THE DIAMOND BE DAMAGED IN THE PROCESS OF DISMOUNTING THEM FROM THE EARRINGS.

Essentially, petitioner claims that the dismantling of the diamond from its original setting was part of the obligation assumed by the private respondents under the contract of service. Thus, they should be held liable for damages arising from its breakage. On the other hand, the version of the private respondents, upheld by the RTC and the CA, is that their agreement with the petitioner was for crafting two gold rings mounted with diamonds only and did not include the dismantling of the said diamonds from their original setting.^[17] Consequently, the crux of the instant controversy is the scope of the obligation assumed by the private respondents under the verbal contract of service with the petitioner.

The Court notes that, during the trial, private respondents vigorously denied any transaction between Dingdings Jewelry Shop and the petitioner, through Tita Payag. Rose Cabrido, for instance, denied having ever met Payag before the latter came to seek reimbursement for the value of the broken diamond. Likewise, while Marilou acknowledged acquaintance with Payag, she nevertheless denied accepting any job order from her. Debunking their protestations, however, the MTCC of Tagbilaran City rendered its decision on November 26, 1999 in favor of herein petitioner.

Apparently realizing the weakness and futility of their position, private respondents conceded, on appeal, the existence of an agreement with the petitioner for crafting a pair of gold rings mounted with diamonds. This apparent concession by the private respondents, however, was really nothing but an ingenious maneuver, designed to preclude, just the same, any recovery for damages by the petitioner. Thus, while ostensibly admitting the existence of the said agreement, private respondents, nonetheless denied assuming any obligation to dismount the diamonds from their original settings.^[18]

The inconsistent position of the private respondents impugns their credibility. They cannot be permitted to adopt a certain stance, only to vacillate later to suit their interest. We are therefore inclined to agree with the MTCC in giving credence to the version of the petitioner. The MTCC had the unique opportunity to actually observe the behavior and demeanor of the witnesses as they testified during the trial.^[19]

At any rate, the contemporaneous and subsequent acts of the parties^[20] support the version of the petitioner. Thus, when Tita Payag asked Marilou of Dingdings Jewelry Shop to reset a pair of diamond earrings, she brought with her the said pieces of jewelry so that the diamonds which were still mounted could be measured and the new ring settings crafted accordingly. On the said occasion, Marilou expressed no reservation regarding the dismounting of the diamonds which, after all, was an integral part of petitioners job order. She should have instructed Payag to have them dismounted first if Marilou had actually intended to spare the jewelry shop of the task but she did not. Instead, petitioner was charged P400 for the job order which was readily accepted. Thus, a perfected contract to reset the pair of diamond earrings arose between the petitioner, through Payag, and Dingdings Jewelry Shop, through Marilou.

Marilous subsequent actuations were even more revealing as regards the scope of obligation assumed by the jewelry shop. After the new settings were completed in 3 days, she called up the petitioner to bring the diamond earrings to be reset.^[21] Having initially examined one of them, Marilou went on to dismount the diamond from its original setting. Unsuccessful, she then delegated the task to their goldsmith, Zenon Santos. Having acted the way she did, Marilou cannot now deny the shops obligation to reset the pair of earrings.

Obligations arising from contracts have the force of law between the contracting parties.^[22] Corollarily, those who in the performance of their obligations are guilty of fraud, negligence or delay and those who in any manner contravene the tenor thereof, are liable for damages.^[23] The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.^[24]

In the case at bar, it is beyond doubt that Santos acted negligently in dismounting the diamond from its original setting. It appears to be the practice of the trade to use a miniature wire saw in dismounting precious gems, such as diamonds, from their original settings.^[25] However, Santos employed a pair of pliers in clipping the original setting, thus resulting in breakage of the diamond. The jewelry shop failed to perform its obligation with the ordinary diligence required by the circumstances. It should be pointed out that Marilou examined the diamond before dismounting it from the original setting and found the same to be in order. Its subsequent breakage in the hands of Santos could only have been caused by his negligence in using the wrong equipment. *Res ipsa loquitur*.

Private respondents seek to avoid liability by passing the buck to Santos who claimed to be an independent worker. They also claim, rather lamely, that Marilou simply happened to drop by at Dingdings Jewelry Shop when Payag arrived to place her job order.^[26]

We do not think so.

The facts show that Santos had been working at Dingdings Jewelry Shop as goldsmith for about 6 months accepting job orders through referrals from private respondents.^[27] On the other hand, Payag stated that she had transacted with Dingdings Jewelry Shop on at least 10 previous occasions, always through Marilou.^[28] The preponderance of evidence supports the view that Marilou and Zenon Santos were employed at Dingdings Jewelry Shop in order to perform activities which were usually necessary or desirable in its business.^[29]

We therefore hold that an obligation to pay actual damages arose in favor of the petitioner against the respondents spouses who admittedly owned and managed Dingdings Jewelry Shop. It was proven that petitioner replaced the damaged jewelry in the amount of P30,000.^[30]

The facts of the case also justify the award of moral damages. As a general rule, moral damages are not recoverable in actions for damages predicated on a breach of contract for it is not one of the items enumerated under Article 2219 of the Civil Code.^[31] Moral damages may be awarded in a breach of contract only when there is proof that defendant acted in bad faith, or was guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligation.^[32] Santos was a goldsmith for more than 40 years.^[33] Given his long experience in the trade, he should have known that using a pair of pliers instead of a miniature wire saw in dismounting a precious stone like a diamond would have entailed an unnecessary risk of breakage. He went on with it anyway. Hence, respondent spouses are liable for ₱10,000 as moral damages due to the gross negligence of their employee.

However, private respondents refusal to pay the value of the damaged jewelry emanated from an honest belief that they were not responsible therefor, hence, negating any basis for the award of attorneys fees.^[34]

WHEREFORE, the instant petition is GRANTED and the assailed decision of the Court of Appeals dated November 26, 1999 is hereby reversed and set aside. Private respondents Luis Cabrido and Rose Sun-Cabrido are hereby ordered to pay, jointly and severally, the amount of ₱30,000 as actual damages and ₱10,000 as moral damages in favor of the petitioner.

No costs.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

^[1] Penned by Associate Justice Ma. Alicia Austria-Martinez and concurred in by Associate Justices B.A. Adeuin-de la Cruz and Presbitero J. Velasco, Jr., *Rollo*, pp. 17-23.

^[2] TSN, December 14, 1994, pp. 7-8.

^[3] Exhibit I; TSN, February 7, 1995, p. 4.

^[4] Exhibit 1; TSN, November 8, 1994, pp. 3-4.

^[5] Exhibit C.

^[6] TSN, December 14, 1995, p. 9.

^[7] TSN, November 8, 1994, pp. 6-7.

^[8] Exhibit B; TSN, December 14, 1994, pp. 12-14.

^[9] TSN, February 7, 1995, p.p. 4-5.

^[10] *Id.*, p. 9.

^[11] TSN, August 18, 1995, pp. 3-4.

^[12] TSN, June 8, 1995, pp. 2-5.

^[13] Exhibit D.

^[14] Petition, Annex D, *Rollo*, pp. 29-36. Penned by Judge Emma Eronico-Supremo.

^[15] Petition, Annex B, *Rollo*, pp. 24-28. Penned by Judge Pacito A. Yape.

^[16] See footnote no. 1.

^[17] Comment, *Rollo*, p. 57.

^[18] Appellants Brief, Original Records, pp. 97-101.

[19] [People vs. Lacsa](#), 339 SCRA 178, 190 [2000]; [People vs. Continente](#), 339 SCRA 1, 29 [2000]; [People vs. Barro, Sr.](#), 338 SCRA 312, 322 [2000].

[20] [Tangquilig vs. CA](#), 334 Phil. 68, 74 [1997].

[21] TSN, December 14, 1994, p. 11.

[22] Article 1159, Civil Code of the Philippines.

[23] Article 1170, Civil Code of the Philippines.

[24] Article 1173, Civil Code of the Philippines.

[25] TSN, January 20, 1995, p. 3.

[26] TSN, August 18, 1995, p. 3.

[27] TSN, June 8, 1995, pp. 6-7.

[28] TSN, November 8, 1994, p. 4.

[29] Article 280 of the Labor Code pertinently provides:

Art. 280. Regular and Casual Employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer xxx.

[30] Exhibits B; F; G.

[31] [Calalas vs. Court of Appeals](#), 302 SCRA 356 [2000].

[32] [Magat, Jr. vs. Court of Appeals](#), 337 SCRA 298, 308 [2000]; [Integrated Packaging Corporation vs. Court of Appeals](#), 333 SCRA 170 [2000].

[33] TSN, June 8, 1995, p. 4.

[34] [Bernardo vs. Court of Appeals](#), 275 SCRA 413, 432 [1997].